

TITLE 760 DEPARTMENT OF INSURANCE

Proposed Rule LSA Document #05-133

DIGEST

Amends 760 IAC 1-6.2 to set standards for prelicensing and continuing education for bail agents and recovery agents and to otherwise implement IC 27-10-3. Effective 30 days after filing with the Secretary of State.

IC 4-22-2-2.1-5 Statement Concerning Rules Affecting Small Businesses

Estimated Number of Small Businesses Subject to This Rule:

Pursuant to IC 27-10-3-5 and IC 27-10-3-7 bail agents and recovery agents are required to take a prelicensing course and continuing education courses. The Department of Insurance is directed to set curriculum requirements and review proposed course. IC 27-10-3-7.1(a)(2) directs a reasonable fee to be paid to the commissioner for the review of these courses. The Department has set the filing fee at \$40 for courses and \$20 for instructors. The Department believes this is a reasonable cost in light of the time that will be involved in reviewing applications. The fees are deposited into a dedicated fund used to fund the expenses of administering the licensing, auditing and enforcement of bail and recovery agents. The Department expects that instructors and course providers may be small businesses. As we do not know who may submit courses and/or instructors it is unknown how many small businesses this rule will affect.

Estimated Average Annual Administrative Costs that Small Businesses will Incur:

The proposed rule requires an annual filing fee of \$40 for courses and \$20 for instructors. The Department expects for a course provider to have one course for bail agents and perhaps a second course for recovery agents. Each course would have an instructor. If all are submitted by the same small business then the annual administrative costs would be \$100.

Estimated Total Annual Economic Impact on Small Businesses:

The proposed rule requires an annual filing fee of \$40 for courses and \$20 for instructors. The Department expects for a course provider to have one course for bail agents and perhaps a second course for recovery agents. Each course would have an instructor. If all are submitted by the same small business then the annual administrative costs would be \$100.

Regulatory Flexibility Analysis of Alternative Methods:

The Department is directed by statute to set forth procedures to approve courses and set an annual reasonable fee. This rule contains standards and sets the annual fee at \$40 for courses and \$20 for instructors. The Department reviewed the fees due for insurance producer courses and instructors. The final decision on fees was based upon the amount of time it will take to review and record the courses and instructors.

760 IAC 1-6.2-1
760 IAC 1-6.2-1.5
760 IAC 1-6.2-6
760 IAC 1-6.2-10
760 IAC 1-6.2-11
760 IAC 1-6.2-12
760 IAC 1-6.2-13
760 IAC 1-6.2-14

SECTION 1. 760 IAC 1-6.2-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-6.2-1 Authority
Authority: IC 27-10-2-1
Affected: IC 27-10-3-21

Sec. 1. This rule is adopted and promulgated by the department of insurance under IC 27-10-2-1 **and IC 27-10-3-21**. (*Department of Insurance; 760 IAC 1-6.2-1; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2862; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 530*)

SECTION 2. 760 IAC 1-6.2-1.5 IS ADDED TO READ AS FOLLOWS:

760 IAC 1-6.2-1.5 Definitions
Authority: IC 27-10-2-1
Affected: IC 27-10-1-9; IC 27-10-3

Sec. 1.5. The following definitions apply throughout this rule:

- (1) "Bail agent" has the meaning set forth in IC 27-10-1-4.**
- (2) "Commissioner" means the commissioner of the department.**
- (3) "Continuing education class" means classes available to licensed bail or recovery agents on topics related to the bail industry necessary to renew a license under IC 27-10-3-7(b).**
- (4) "Department" means the department of insurance.**
- (5) "Prelicensing class" means a classroom course of study to prepare an applicant for taking the examination test as required by IC 27-10-3-3(a)(4) and**

IC 27-10-3-5(4).

(6) “Provider” means a person or entity that offers an approved prelicensing or continuing education class.

(7) “Qualified instructor” means a person who has obtained a high school diploma and also meets one (1) of the following criteria:

(A) Holds a valid teaching license in the state of Indiana.

(B) Has a minimum of two (2) years of managerial, supervisory, or teaching experience in the bail industry.

(C) Holds a property and casualty insurance producer license with the designation of CPCU, FLMI, CIC, or CHFC.

A qualified instructor must be compliant with all applicable state laws and 18 USC 1033 and may not have a bail agent or recovery agent license or insurance producer license that is, or has in the past been, suspended or revoked in Indiana or any other state.

(7) “Recovery agent” has the meaning set forth in IC 27-10-1-9.

(8) “Structured setting” means a class that meets at a:

(A) set time; and

(B) fixed location.

The term does not include on-line or self-study classes.

(Department of Insurance; 760 IAC 1-6.2-1.5)

SECTION 3. 760 IAC 1-6.2-2 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-6.2-2 Soliciting business; actions considered

Authority: IC 27-10-2-1

Affected: IC 27-10-3-18; IC 27-10-4-2

Sec. 2. (a) A bail agent or a recovery agent shall be deemed to be soliciting business in violation of the law if the bail agent or recovery agent, while present in any:

(1) jail;

(2) sheriff's office;

(3) constable's office;

(3) police station;

(4) courthouse; or

(5) courtroom,

without invitation, speaks with, approaches, or communicates with, in writing or otherwise, any person, with the intent to solicit bail business.

(b) This rule does not prevent a bail agent or a recovery agent from being in and around a:

(1) jail;

(2) sheriff's office;

- (3) constable's office;
- (4) police station;
- (5) courthouse; or
- (6) courtroom

when called there by a client or for the purpose of seeing that the defendants on whom the bonds have been written are present. (*Department of Insurance; 760 IAC 1-6.2-2; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2862; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 530*)

SECTION 4. 760 IAC 1-6.2-3 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-6.2-3 Solicitation in bail agent's behalf by unlicensed person

Authority: IC 27-10-2-1

Affected: IC 27-10-4-2

Sec. 3. (a) Any licensed bail agent who knowingly permits any person, not licensed as a bail agent, to solicit business ~~in~~ **on** the agent's behalf as prohibited by law, shall be deemed to be in violation of the law.

(b) Any person, not licensed as a bail agent, who:

(1) is connected with a bail agent or ~~an authorized~~ a surety company; and ~~who~~

(2) makes unsolicited contact with a defendant ~~prior to~~ **before** the approval or acceptance of the bond by a proper officer;

shall be deemed to be soliciting bail bonds without a license. (*Department of Insurance; 760 IAC 1-6.2-3; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2862; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 530*)

SECTION 5. 760 IAC 1-6.2-4 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-6.2-4 Power of attorney

Authority: IC 27-10-2-1

Affected: IC 27-10-4-5

Sec. 4. Any licensed bail agent acting on behalf of an authorized surety company must attach to each bond a numbered, ~~duly~~ **original properly** executed power of attorney from the surety company in an amount of at least the penalty of the bond. (*Department of Insurance; 760 IAC 1-6.2-4; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2862; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 530*)

SECTION 6. 760 IAC 1-6.2-5 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-6.2-5 Receipts for receiving and returning collateral

Authority: IC 27-10-2-1
Affected: IC 27-10-2-14

Sec. 5. (a) When a bail agent accepts collateral, the agent shall give a written receipt. The receipt shall **do the following**:

- (1) Identify the bond for which the collateral was received;
- (2) Give a full description of the collateral;
- (3) Name the individual giving the collateral; and
- (4) Specify the terms for redemption of the collateral.

(b) When a bail agent returns collateral, the agent shall give a written receipt. The receipt shall **do the following**:

- (1) Identify the bond for which the collateral was received;
- (2) Give a full description of the collateral returned; and
- (3) Include the signature of the person to whom the collateral was returned.

(Department of Insurance; 760 IAC 1-6.2-5; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2862; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 530)

SECTION 7. 760 IAC 1-6.2-6 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-6.2-6 Manner of conducting business; capacity in which bail agent acts

Authority: IC 27-10-2-1
Affected: IC 27-10-3-8

Sec. 6. Every bail agent **and recovery agent** shall conduct the agent's business in such a manner that the public and those dealing with the agent shall be aware of the capacity in which the agent is acting. **No bail agent or recovery agent shall misrepresent his or her authority.** *(Department of Insurance; 760 IAC 1-6.2-6; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2862; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 530)*

SECTION 8. 760 IAC 1-6.2-7 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-6.2-7 Gifts to public officials or prisoners prohibited; gifts to relatives permitted

Authority: IC 27-10-2-1
Affected: IC 27-10-4-2

Sec. 7. No bail agent shall give, directly or indirectly, any gift of any kind to **any of the following**:

- (1) A public official.
- (2) An employee of any government agency. ~~or~~
- (3) A prisoner in any jail or place of detention.

This section shall not prevent the customary giving of gifts to relatives by blood or marriage.

(Department of Insurance; 760 IAC 1-6.2-7; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2863;

readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 530)

SECTION 9. 760 IAC 1-6.2-8 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-6.2-8 Records must be kept; information required

Authority: IC 27-10-2-1

Affected: IC 27-10-2-14

Sec. 8. (a) Every bail agent shall keep complete records of all business done under authority of the:

(1) agent's license; or ~~under the authority of the~~

(2) license of any bail agent employed by the agent.

All records kept by ~~such the~~ bail agent, including all documents and copies thereof, shall be open to inspection or examination by the commissioner ~~of the department of insurance~~ or his **or her** representatives at all reasonable times at the principal place of business of the bail agent as designated in the bail agent's license.

(b) ~~Such~~ **The** records for each bail bond executed shall include, but not be limited to, the following:

(1) The original application for a bond.

(2) A copy of the power of attorney used pursuant to the application and issued bond.

(3) A dated, serially numbered receipt for premium payment evidencing the power of attorney used for the bond, signed by both **of the following**:

(A) The paying individual; and

(B) **The** receiving bail agent.

(4) Collateral receipts, if any, issued for each bond.

(5) Complete accounting records reflecting all premiums received and disbursements.

(Department of Insurance; 760 IAC 1-6.2-8; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2863; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 530)

SECTION 10. 760 IAC 1-6.2-9 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-6.2-9 Acceptance of collateral for bail bond; collateral receipt required

Authority: IC 27-10-2-1

Affected: IC 27-10-2

Sec. 9. Each bail agent who accepts collateral security for a bail bond shall, for ~~such the~~ bail bond written, make and attach to each ~~such~~ bail bond a copy of receipt for ~~such the~~ collateral received. *(Department of Insurance; 760 IAC 1-6.2-9; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2863; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 530)*

SECTION 11. 760 IAC 1-6.2-10 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-6.2-10 Contract between principal and surety; terms and conditions

Authority: IC 27-1-3-7

Affected: IC 27-10-2-3; IC 27-10-4-4

Sec. 10. (a) The terms and conditions of all contracts entered into between a principal and a surety for a bail bond shall set forth **the**:

- (1) ~~the~~ bond number;
- (2) ~~the~~ date;
- (3) ~~the~~ amount of the premium; and
- (4) ~~the~~ name of the surety company;

on the form ~~prescribed~~ **approved** by the commissioner of ~~the department of insurance~~. A specimen form of ~~such the~~ terms and conditions appears in subsection (b). Any other form may be used upon the approval of the commissioner of ~~the department of insurance~~ which **that** meets the minimum standards of the specimen form.

(b) The following is an example of the terms and conditions of a contract between a principal and a surety:

TERMS AND CONDITIONS

The following terms and conditions are an integral part of this application for appearance bond # _____ dated _____ for which _____ Surety Company or its agents shall receive a premium in the amount of _____ (\$_____) Dollars, and the parties agree that said appearance bond is conditioned upon full compliance by the principal with all said terms and conditions and is a part of said bond and application therefor.

1. _____ Surety Company as bail, shall have control and jurisdiction over the principal during the term for which the bond is executed and shall have the right to apprehend, arrest, and surrender the principal to the proper officials at any time as provided by law.

2. It is understood and agreed that the happening of any one of the following events shall constitute a breach of principal's obligations to _____ Surety Company hereunder, and _____ Surety Company shall have the right to forthwith apprehend, arrest, and surrender principal, and principal shall have no right to any refund of premium whatsoever. Said events which shall constitute a breach of principal's obligations hereunder are:

(a) If principal shall depart the jurisdiction of the court without the written consent of the court and _____ Surety Company or its agent.

(b) If principal shall move from one address to another within the State of Indiana without notifying _____ Surety Company or its agent in writing prior to said move.

(c) If principal shall commit any act which shall constitute reasonable evidence of principal's intention to cause a forfeiture of said bond.

(d) If principal shall make any material false statement in the application.

(e) If principal is arrested and incarcerated for any offense other than a minor traffic violation.

Signed, sealed, and delivered this _____ day of _____ ~~19~~ **20**_____

Signature of Applicant

Mailing Address

Telephone Number

(Department of Insurance; 760 IAC 1-6.2-10; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2863; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 530)

SECTION 12. 760 IAC 1-6.2-11 IS ADDED TO READ AS FOLLOWS:

760 IAC 1-6.2-11 Prelicensing and continuing education classes

Authority: IC 27-10-3-21

Affected: IC 27-10; IC 35

Sec. 11. (a) Prelicensing and continuing education classes must be filed with and approved by the commissioner. Any of the following persons or entities may submit a prelicensing or continuing education class for approval:

- (1) individual.**
- (2) insurance company.**
- (3) an insurance or bail trade organization.**
- (4) an accredited college.**
- (5) an insurance education association.**

(b) A pre-licensing or continuing education class shall include instruction for bail and recovery agents in the following areas:

- (1) IC 27-10.**
- (2) This rule.**
- (3) Practical application of the statutory requirements in the field of bail bonds.**
- (4) Other provisions of Indiana statutes that affect bail and recovery operation including, but not limited to. Title 35.**
- (5) Ethics.**
- (6) Applicable federal laws.**
- (7) Technological and procedural resources used in bail and recovery operations.**

All classes must be held in a structured setting with a qualified instructor approved by the commissioner under section 12 of this rule.

(c) The application for approval shall include the following information:

- (1) An outline for the class including the time allocated to each topic.**

- (2) The class materials that will be used for teaching.**
- (3) The information that will be submitted to the attendees.**
- (4) The location where the class will be held.**

(d) The application for approval shall be submitted to the commissioner along with a filing fee in the amount of forty dollars (\$40) per class. The commissioner shall review the proposed class and approve or disapprove the class within ninety (90) days. If the commissioner fails to act the class is deemed approved after ninety (90) days. A request for a hearing on any denial must be presented in writing to the commissioner within thirty (30) days after the denial is issued. A class approval is valid for one (1) year. Thereafter the program or class must be resubmitted for review.

(e) The provider shall issue a certificate of compliance, on the form provided in section 14 of this rule, to each attendee at the end of the class. The certificate of completion shall certify that the applicant:

- (1) has satisfactorily completed the class; and**
- (2) was present in a structured setting with an approved instructor for the requisite time period.**

The provider of the class shall take attendance, signed by the attendee, at each class. The provider shall retain attendance reports for four (4) years.

(f) The commissioner may, after notice and an opportunity for a hearing do the following:

(1) Withhold, withdraw, suspend, or revoke the approval of a pre-licensing or continuing education class if the commissioner finds any of the following:

(A) The provider or an instructor has made a material misrepresentation on any of the following:

- (i) the application for approval;**
- (ii) a certificate of completion; or**
- (iii) attendance records;**

(B) The provider fails to timely provide certificates of completion.

(C) The provider or an instructor does not display competence in the area of teaching, bail issues or recovery issues.

(D) The instructor substantially deviates from the approved class materials.

(2) Assess a fine or suspend or revoke a bail or recovery agent license if the commissioner finds that the bail or recovery agent has made a material alteration to a certificate of completion.

(g) The commissioner shall maintain a current list of approved bail agent

prelicensing and continuing education providers.

(h) A course has been approved by the Professional Bail Agents of the United States shall be approved by the department. (*Department of Insurance; 760 IAC 1-6.2-11*)

SECTION 13. 760 IAC 1-6.2-12 IS ADDED TO READ AS FOLLOWS:

760 IAC 1-6.2-12 Approval of instructor

Authority: IC 27-10-3-21

Affected: IC 27-10; IC 35

Sec. 12. (a) An instructor must be a qualified instructor and approved by the commissioner to teach a prelicensing or continuing education class. A qualified instructor that has been approved by the commissioner may teach any bail or recovery agent class that has been approved by the commissioner.

(b) A qualified instructor may become approved by submitting an application on a form prescribed by the department.

(c) The application for approval shall be accompanied by an application fee of twenty dollars (\$20).

(d) Approval of an instructor is valid for two (2) years.

(e) The commissioner may, after notice and an opportunity for a hearing, withhold, withdraw, suspend, or revoke the approval of an instructor if the commissioner finds any of the following:

(1) The instructor has made a material misrepresentation on any of the following:

(A) The application submitted to the commissioner;

(B) A certificate of completion; or

(C) Attendance records;

(2) The instructor displays incompetence or deviates substantially from the approved class material.

(*Department of Insurance; 760 IAC 1-6.2-12*)

SECTION 14. 760 IAC 1-6.2-13 IS ADDED TO READ AS FOLLOWS:

760 IAC 1-6.2-13 Education hour

Authority: IC 27-10-3-21

Affected: IC 27-10; IC 35

Sec. 13. (a) A prelicensing or continuing education hour is based on a one (1) hour block of time. Fifty (50) minutes of instruction in a sixty (60) minute period of time will constitute one (1) credit hour.

(b) Education credit hours will be approved in not less than one half (1/2) hour increments.

(c) One (1) education credit hour is the minimum number of hours that will be approved for any prelicensing program or continuing education class. Eight (8) hours of classroom instruction per day is the maximum number of hours that will be approved for any prelicensing program or continuing education class. (*Department of Insurance; 760 IAC 1-6.2-13*)

SECTION 15. 760 IAC 1-6.2-14 IS ADDED TO READ AS FOLLOWS:

760 IAC 1-6.2-16 Certificate of completion

Authority: IC 27-10-3-21

Affected: IC 27-10; IC 35

Sec. 14. (a) The certificate of completion for a prelicensing class required by Section 11 of this rule is as follows:

**CERTIFICATE OF COMPLETION
PRELICENSING
BAIL BOND OR RECOVERY AGENT LICENSE**

This Certificate must be presented at the examination site and must be accompanied by two (2) forms of identification, one of which must include a photograph. This Certificate is valid for six (6) months after the date issued.

Name of Student

Date of Birth

Name of School

Address of School

Name of Instructor

City/State Zip Code

Days of Week Class Offered (circle): M T W TH F S S

Date and Time of Class: _____

Total number of hours of class instruction received by applicant at the above location and time and in the presence of the above instructor(s) _____

I hereby certify, under penalty of perjury, that the above information is true and correct to the best of my knowledge and belief and I understand that a false statement is cause for denial, suspension, or revocation of a class approval.

Date

Instructor's Name (print)

Instructor's Signature

I hereby certify, under penalty of perjury, that the above information is true and correct to the best of my knowledge and belief, and I understand that a false statement is cause for denial, suspension, or revocation of a bail bond license.

Date

Applicant's Name

Applicant's Signature

(b) The certificate of completion for a continuing education class required by section 11 of this rule is as follows:

**CERTIFICATE OF COMPLETION
CONTINUING EDUCATION
BAIL BOND OR RECOVERY AGENT LICENSE**

This Certificate shall be submitted to the Department of Insurance along with the renewal application.

Name of Student

Date of Birth

Name of School

Address of School

Name of Instructor

City/State Zip Code

Days of Week Class Offered (circle): M T W TH F S S

Date and Time of class: _____

Total number of hours of class instruction received by applicant at the above location and time and in the presence of the above instructor(s): _____

I hereby certify, under penalty of perjury, that the above information is true and correct to the best of my knowledge and belief, and I understand that a false statement is cause for denial, suspension, or revocation of a class approval.

Date

Instructor's Name (print)

Instructor's Signature

I hereby certify, under penalty of perjury, that the above information is true and correct to the best of my knowledge and belief, and I understand that a false statement is cause for denial, suspension, or revocation of a bail bond license.

Date

Agent's Name (print)

Agent's Signature

(Department of Insurance; 760 IAC 1-6.2-14)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on February 1, 2006, at 10:00 a.m., at the Department of Insurance, 311 West Washington Street, Suite 300, Indianapolis, Indiana the Department of Insurance will hold a public hearing on a proposed to set standards for prelicensing and continuing education for bail agents and recovery agents and to otherwise implement IC 27-10-3.

The Department is directed by statute establish standards and an approval process for prelicensing and continuing education classes for bail and recovery agents. The proposed rule affects small employers that will offer courses or be instructors. The providers will develop classes and pay an annual filing fee to the Department.

Copies of the rules are available on the Department of Insurance's Web site at www.state.in.us/idoi. Copies of these rules are now on file at the Department of Insurance, 311 West Washington Street, Suite 300 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Jim Atterholt
Commissioner